

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

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IP INNOVATION L.L.C. AND TECHNOLOGY LICENSING CORPORATION,	§
	§
	§
Plaintiffs,	§
	§
v.	§
	§
GOOGLE INC.,	§
	§
Defendant.	§

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**IP INNOVATION'S REPLY IN SUPPORT OF ITS MOTION FOR A PROTECTIVE  
ORDER PURSUANT TO FED.R.CIV.P. 26(c)**

As Google correctly notes, any attempt to block the taking of the Smith deposition is now effectively moot, as Google conducted the deposition on January 15th. Likewise, Google is correct that the timely objections raised by IP Innovation's motion could be dealt with as one of the upcoming motions in limine, the deadline for which is several weeks away.

The Plaintiffs, however, were compelled to preserve their objections to the untimeliness of Google's deposition, given that: 1) Google did not identify who Mr. Smith was, or why his deposition was being taken until January 8, 2010; 2) Google had not included Mr. Smith on its list of witnesses, nor had Google included him amongst the 50 witnesses which it had identified only last month in their supplemental initial disclosure; and 3) because of the coincident date of expert supplemental reports on January 15<sup>th</sup>, Plaintiffs were not able to attend the deposition in person.

IP Innovation, however, believes that such a motion should be unnecessary, as Plaintiffs – prior to filing their motion – indicated their willingness to stipulate to the authenticity of

Google's web page as part of a larger compromise about the authenticity and admissibility of other exhibits that each side would likely rely upon at trial. IP Innovation is generally averse to filing such motions, except in cases such as the present motion to compel which was necessary to preserve their objections due to when the deposition was noticed and scheduled. Despite the present motion, however, the Plaintiffs are still amenable to reaching a compromise to agree to the admissibility and authenticity of such an exhibit.

Thus, pursuant to Fed. R. Civ. P. 26 (c) and 32(a)(5)(A), Plaintiffs respectfully request that the Court bar Google's use of such testimony against the Plaintiffs.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing **IP INNOVATION'S REPLY IN SUPPORT OF ITS MOTION FOR A PROTECTIVE ORDER PURSUANT TO FED.R.CIV.P. 26(c)** was filed with the Clerk of the Court on January 20, 2010 using the CM/ECF system, which will send notification of such filing to the following at their email address on file with the Court.

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